IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 18353 of 2006(I)

OS.424/1999 of MUNSIFF COURT,CHAVAKKAD
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PETITIONERS:
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1. JOSEPH S/O.ITTOOP, KATTIL HOUSE,
KATTAKAMPAL VILLAGE, THRISSUR.

2. KARUNA W/O.JOSEPH, DO DO

BY ADV. SRI.T.M.CHANDRAN
SRI.S.SUJITH

RESPONDENTS:
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1. MADHAVI AMMA D/O.ICHIRI AMMA,
KARUMATHIL, THALAMATH HOUSE, KATTAKAMBAL,
CHAVAKKAD, TRICHUR.

2. MALLIKA,TEACHER, D/O.SAROJINI AMMA
-DO- -DO-

BY ADV. SRI.P.RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 18353 OF 2006

APPENDIX

PEITTIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF COMMISSION REPORT DATED 8.12.99.

EXT.P2 : TRUE COPY OF RE-SURVEY PLAN DATED 29.04.86.

EXT.P3 : TRUE COPY OF PETIITON IA NO.236/01 DATED 12.01.01 FILED BY PLAINTIFFS.

EXT.P4 : TRUE COPY OF COMMISSION REPORT AND PLAN DATED 31.05.06.

EXT.P5 : TRUE COPY OF PETITION IA 2151/06 FILED BY THE DEFENDANTS.

EXT.P6 : TRUE COPY OF WITNESS LIST AND DOCUMENT LIST DATED 01.07.06.

EXT.P7 : TRUE COPY OF PETITION IA 1987/06 DATED 20.06.06 FILED BY THE PLAINTIFFS.

EXT.P8 : TRUE COPY OF COUNTER FILED BY THE RESPONDENTS IN IA 1987/06.

EXT.P9 : TRUE COPY OF ORDER DATED 03.07.06 IN IA 1987/06.

EXT.P10 : TRUE COPY OF ORDER DATED 03.07.06 IN IA NO.2151/06.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 18353 OF 2006

Dated this the 20th day of September, 2007

JUDGMENT

Under challenge in this Writ Petition under Article 227 are Exts.P10 and P9 orders. Under Ext.P10, an application submitted by the defendants for setting aside the Commissioner's report and plan is dismissed and under Ext.P9, an application filed by the respondent Plaintiff for amendment of the plaint in the light of the Commissioner's report and plan has been allowed.

2. I have heard the submissions of Mr.T.M. Chandran, counsel for the petitioner and those of Sri.P.Ramachandran, counsel for the respondent. Mr.Chandran addressed me very strenuously and on all the grounds and he would flay both Exts.P9 and P10. But I am not inclined to accept the challenge against Ext.P9 except the argument that the learned Munsiff was not justified in giving retrospective effect to the amendment which was sought for by the respondents. Ext.P9 will stand modified to the extent of clarifying that Ext.P9 will become effective only from the date of the amendment application and not retrospectively. As for Ext.P10, Mr.Chandran is certainly right when he submits that the order is cryptic and does not specifically deal with the objections raised

by the petitioner to the Commissioner's Report and Ext.P10 is passed without holding any enquiry. Mr.Chandran claims that a list of witnesses and documents had been filed by the petitioners. Even then having regards to the contours of this court's jurisdiction under Article 227, I am not inclined to set aside Ext.P10 in a suit which is filed way back in 1999. However, considering the grievance that no opportunity was given to the petitioner for substantiating the objections to the Commissioner's Report, I dispose of the Writ Petition issuing the following directions:

The petitioner will have the liberty of adducing whatever evidence he has against the Advocate Commissioner's Report as the suit goes for trial. Once the entire evidence in the suit is recorded and the trial is over, the learned Munsiff will hear both sides on the question whether the Commissioner's Report is acceptable. If the learned Munsiff is inclined on the basis of the evidence which comes on record during trial (including the evidence adduced by the petitioner against the Commissioner's Report) that the Commissioner's Report is unacceptable, then confirmation of Ext.P10 by this Court will not stand in the way of the learned Munsiff issuing fresh Commission. It is needless to mention that any finding by the learned Munsiff that the

Commissioner's Report is not acceptable will have its own effects on the amendment allowed and confirmed by this Court under this judgment.

PIUS C. KURIAKOSE, JUDGE

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